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SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS

SUMMARY RECORD OF THE 13th MEETING

Held at Headquarters, New York,
on Friday, 8 September 1978, at 10.30 a.m.

Chairman: Mr. Cuevas CANCINO (Mexico)

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The meeting was called to order at 10.55 a.m.

CONSIDERATION, PURSUANT TO PARAGRAPH 2 OF GENERAL ASSEMBLY RESOLUTION 32/150, OF PROPOSALS AND SUGGESTIONS SUBMITTED BY STATES (continued) (A/AC.193/L.3)

1. Mrs. D'HAUSSY (France) said that the need to ensure the consistent implementation of the principle of the non-use of force should remain a central concern of nations and of the world Organization because of the serious conflicts that had occurred over the past 30 years, the hotbeds of tension that continued to exist, and the accumulation of weapons that could lead to new confrontations. The Soviet Union's initiative was commendable in that it drew the attention of the United Nations once again to one of its most essential tasks. The principle of the non-use of force was unanimously recognized and legally established. The Committee's only problem was, therefore, to choose the most appropriate means of promoting respect for that principle in practice.

2. Article 1 and Article 2, paragraph 4, of the Charter made it clear that the non-use of force was a fundamental legal obligation incumbent on all Members. There was no ambiguity whatsoever with regard to the scope and compelling force of Article 2, paragraph 4. The Charter prohibited the use of force in the most general terms possible, which were therefore the least subject to restrictive interpretations. The only exceptions to that principle of general prohibition were exhaustively enumerated by the Charter itself. Neither additions to nor deletions from the Charter were advisable. Thus the legal situation was clear: a legal instrument prohibiting the use of force, without any loop-holes, already existed in the form of the Charter, which contained mechanisms to ensure respect for that prohibition and constituted the supreme and most universal instrument of law. The question, therefore, was to determine what action could be taken to achieve greater compliance with the Charter on the part of States.

3. Although her delegation agreed with the fundamental objectives of the Soviet Union, it was not convinced that drafting a new treaty was the best approach. The elaboration of such a treaty would be a useless exercise if it merely reiterated the provisions of the Charter. If, on the other hand, a draft treaty introduced new elements that were not in the existing provisions, that would be tantamount to revision of the Charter carried out according to procedures for which no provision had been made.

4. She was aware that the Soviet delegation's aim was simply to make the meaning of the Charter's provisions clearer and that it felt that to do so would be in line with the provisions of Article 13 of the Charter. Although her own delegation recognized that there were international instruments that developed provisions of the Charter, particularly in the field of human rights, it did not think it was possible to develop Article 2, paragraph 4, in a treaty without upsetting the basic balance established with respect to the non-use of force by the Charter.

5. The principle of the non-use of force was an integral part of a whole from which it could not be dissociated. It was linked with the principle of peaceful settlement of disputes and with the right of self-defence. Moreover, it was a

(Mrs. D'Haussy, France)

component of the peace-keeping system established by the Charter, both in Articles 11 and 12 determining the General Assembly's possibilities for taking action in that regard and in Chapter VII establishing the responsibilities of the Security Council. It would be very risky to do anything that might restrict the discretionary powers that the Security Council had under Article 39 of the Charter; that was why even texts of such great political importance as the Definition of Aggression had been given only the status of a recommendation. It was dangerous to isolate any one provision of the Charter and give it special treatment.

6. Moreover, a reaffirmation in a treaty of the principle of the non-use of force and an attempt to make the meaning of that principle clearer might weaken the Charter from two other points of view.

7. Firstly, for the purpose of ensuring observance of a principle, formulations such as those in the Charter were always preferable to texts drafted on the basis of the concerns of the moment. If specific circumstances were referred to, that might tend to preclude application of the principle to other circumstances. That remark was without prejudice to her delegation's position on the various proposals put forward both in the Soviet draft (A/AC.193/L.3) and during the general debate; for the time being, her delegation wished to limit itself to discussing the question of methods. Because of its broad scope, Article 2, paragraph 4, was perfectly suited to its objective, which was to express an obligation that would be applicable at any time, anywhere and in any circumstances, to all States under the conditions established by the Charter.

8. Secondly, the more far-reaching the attempt to clarify the article in question, the less chance there would be of all States becoming parties to the treaty under consideration. In view of the concerns voiced thus far in the debate, she thought it would be difficult to list in a treaty the types of action reference to which would be acceptable to all States, whether for the purpose of including them in the prohibition of the use of force or of excluding them. If such a listing was not established on the basis of a consensus it could be expected that a number of States would refrain from becoming parties to the treaty in question. Failure of a treaty that was supposed to define the obligation not to resort to force to win acceptance by the whole of the international community would cast doubt on the value of generally accepted principles, such as those set forth in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States and in the Definition of Aggression, and on the value of Article 2, paragraph 4, of the Charter itself. Such a situation would thus result in a weakening of the principle that the treaty aimed at strengthening.

9. Moreover, with regard to the problem of the relationship between States that were parties to the treaty and those States that were not, what would be their respective obligations? If they were different, that would mean that the Charter had been amended. If they were the same, the treaty would serve no purpose. An attempt to strengthen an absolute obligation by means of a new commitment in a treaty would be illusory and perhaps even counter-productive.

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(Mrs. D'Haussy, France)

10. In response to the appeal of the delegation of India, she said that her delegation was not retreating into sterile fatalism and advocating inaction. It did not deny that there was a link between the principle of the non-use of force and the problems of disarmament and peace-keeping. However, those problems were being dealt with elsewhere and did not fall within the Committee's purview.

11. There was a legal means of strengthening the effectiveness of the principle of the non-use of force, namely, development of recourse to peaceful settlement of disputes. Virtually all delegations had emphasized the link between peaceful settlement of disputes and non-use of force. In Article 2, the Charter dealt with the principle of peaceful settlement of disputes before that of non-use of force, and there was an obvious logic in that presentation since the first principle was a prerequisite for the second.

12. States had recourse to force because they could not or would not have recourse to peaceful settlement procedures, of which the Charter offered them a wide choice. It would be useful for the Committee to consider the reasons for that situation, taking into account two factors, namely, the equality and independence of States and the political nature of many disputes. Firstly, the sovereign equality of States was a fundamental principle of the United Nations. Methods of settling disputes should therefore not be imposed on States. Secondly, certain types of settlement of disputes were very difficult to accept in cases where there was a conflict of interests and not simply a legal conflict. In a world that was undergoing constant change owing to its twofold East-West and North-South division, solution of that type of conflict by means of pre-established general mechanisms seemed difficult.

13. An analysis of the causes of the reluctance of States to make use of existing methods of settling disputes should give rise not to proposals for the creation of new machinery, since all possible procedures seemed to have been imagined already, but rather to efforts to encourage better utilization of existing machinery.

14. In that connexion, her delegation had made proposals in the Special Committee on the Charter and on the Strengthening of the Role of the Organization to which it would refer later in the Committee's deliberations. However, there were two points that it wished to draw to the attention of the Committee at that time.

15. Firstly, while not disregarding the role of the Assembly and the Secretary-General, her delegation felt that the best means of settling political conflicts was that constituted by the powers of the Security Council pursuant to Articles 34 to 38 of the Charter.

16. Secondly, without ruling out any of the various means provided for by Article 33 of the Charter, the Committee would do well if, setting aside doctrinal positions and resisting the temptation to apply in the field of international relations machinery that was applicable at the domestic level, it emphasized those methods of peaceful settlement of disputes that were the most likely to inspire the confidence of States.

17. Mr. DUCHÊNE (Belgium) said that any initiative aiming at strengthening the principle of the non-use of force should be closely examined by Member States, for that principle constituted one of the paramount objectives of the Organization and was embodied among the purposes and principles of the Charter. Apart from the Charter, moreover, the non-use of force could be considered one of the essential principles of international law. The risks of tension and causes for concern in international relations were still such that special attention must be paid to the study of all available means of strengthening the legal and political system set up by the Charter. The Soviet Union's initiative was useful as a reminder of the continuing need to pursue that objective.

18. The principle of the non-use of force had been confirmed in several texts adopted in the context of the General Assembly's work, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, the Declaration on Strengthening International Security and the Definition of Aggression. At the regional level, the principle had also been reaffirmed in the Final Act of the Conference on Security and Co-operation in Europe. It should, however, be emphasized that those instruments did not deal exclusively with that principle but covered a broader aspect of relations between States of which the non-use of force constituted only a part. The question therefore arose as to whether a treaty concerning solely the principle of the non-use of force should be drafted.

19. The wording of most of the articles of the Soviet draft treaty (A/AC.193/L.3) had been taken from international instruments already in existence. It could therefore be asked whether it was still necessary to legislate on legal principles that States had already accepted. Moreover, the draft did not appear to contain any precise commitment that had not already been undertaken by Member States, and its content did not appear to necessitate the elaboration of a new treaty. His delegation feared, moreover, that such a text might engender confusion and create ambiguities of a legal nature with respect to the existing international texts.

20. In addition, the draft seemed to imply a more restricted concept of the principle of non-use of force than that provided for in the Charter and in the texts adopted by the General Assembly. In particular his delegation had in mind the somewhat vague wording of article III and article V, which seemed to indicate that the domestic procedures of States could set limits on the application of the principle of the non-use of force.

21. Moreover, his delegation had heard with concern in the Committee statements dwelling on exceptions to the principle of the non-use of force rather than on the necessity for its universal application.

22. For those reasons, it seemed premature at that stage to decide on a single specific method for ensuring greater respect for the principle of the non-use of

(Mr. Duchêne, Belgium)

force. It would be more in keeping with the Committee's mandate to explore all the possibilities open to it, without prejudice to any final option.

23. It should not be forgotten that the Committee's mandate also referred to the question of peaceful settlement of disputes, which was an essential element of the discussion of any fundamental aspect of the spirit and purposes of the Organization. His delegation had accordingly listened with the keenest interest to the suggestions that had been made with regard to a possible rationalization of consideration of the problem of peaceful settlement of disputes.

24. Despite its reservations with regard both to the principle of drafting a treaty and to the content of the articles of the Soviet draft, his delegation wished to state that, because of the importance of the subject dealt with in that draft Belgium was ready to pursue the matter in the appropriate United Nations organs.

25. Mr. ONDA (Japan) said that the lengthy discussions and negotiations that had preceded the establishment of the Committee were evidence of the complicated and controversial character of its work in dealing with two principles which were the corner-stones of the Charter, namely the principles of the non-use of force in international relations and the peaceful settlement of disputes. Given the closely interrelated and mutually complementary nature of those two principles in the maintenance of international peace and security, his delegation fully shared the view expressed by many delegations that the two aspects should be dealt with simultaneously and in a balanced way.

26. The renunciation of war and of the threat or use of force as a means of settling international disputes had been solemnly proclaimed in article 9 of the Japanese Constitution and, since the end of the Second World War, his country had firmly adhered to its policy of conducting international relations exclusively by peaceful means.

27. No one could deny or challenge the paramount importance of enhancing the effectiveness of the principle of the non-use of force for the maintenance and promotion of international peace and security, but the problem was whether the drafting of the new document, particularly in the form of a treaty as proposed, could actually and effectively contribute to the achievement of what the Soviet delegate had described as the "age-old dream of a world without weapons and wars". Rather than producing yet another legal document which repeated the general principles already universally established and agreed upon, the most important prerequisite was to establish and develop a relationship of mutual trust among nations through the adoption of specific disarmament and arms control measures, especially with regard to nuclear disarmament.

28. However, since disputes in relationships among nations were unavoidable, it was vital that every State should have the strong political will to settle international disputes by peaceful means and the self-restraint to refrain from the use or threat of force in seeking a solution. Moreover, the international community as a whole should develop and strengthen effective and workable machinery for that

(Mr. Onda, Japan)

purpose. From that viewpoint, he regretted that the Soviet initiative focused most of its attention on only one of the two vital principles enunciated in Article 2 of the Charter. From the political and, more particularly, from the legal standpoint, that was one of the most controversial issues before the Committee, as a number of delegations had stated.

29. His delegation was convinced that the approach adopted in the proposed draft treaty would inevitably have a number of legal implications with respect to the Charter. If the treaty was to be identical to the Charter, then little would be gained by its adoption. On the other hand, if it was not identical, a complex legal problem would arise from any discrepancy between the legal obligations established by the two instruments. Other delegations had already commented on the problems that would have to be faced if the treaty became a document interpretive of, or complementary to, paragraphs 3 and 4 of Article 2 of the Charter. The relationship between States Members of the United Nations and the signatories to the proposed treaty would pose another serious legal problem.

30. With regard to the principle of the peaceful settlement of disputes, the Committee should strive to revitalize Chapter VI of the Charter to make it a workable and effective tool. While it was broadly recognized that United Nations peace-keeping operations had been conducted successfully in a number of difficult situations, it must also be recognized that they had so far been confined to preventing the expansion and recurrence of armed conflict, rather than leading the parties to reach a peaceful solution. Peace-keeping operations should therefore be institutionalized through the consolidation of a firm legal foundation which, at the same time, would establish a functional link between peace-keeping and peace-building through the machinery for the peaceful settlement of disputes dealt with in Chapter VI of the Charter. The Committee should place greater emphasis on tasks of that kind in its pursuit of the highest goal of the Organization and of the world community: the maintenance of international peace and security.

31. Mr. BADAWI (Egypt) said he was grateful to those who, believing in the need for the early conclusion of a treaty on the non-use of force in international relations, had underlined the dangers of complacency with regard to the ever-increasing tendency to resort to force. An expression of gratitude was also due to those who held the opposite view for having presented the Committee with alternatives which had the merit of variety, although not necessarily of imagination.

32. While he would not offer specific and detailed comments, which he thought would be premature at that stage, he wished to make it clear that he did not share the view that there was no need to restate or reaffirm the principle of the non-use of force. Recent history was replete with examples of the use of force against the territorial integrity of States, his own country being only one among many victims. The question was not whether the principle should be restated or strengthened, but how best to do it. Several interesting proposals had been made in that regard which deserved further consideration.

33. Although the principle of the non-use of force was of paramount importance, he did not share the view that it could be discussed without due regard to the fact

(Mr. Badawi, Egypt)

that it formed part and parcel of a whole structure and philosophy of a world order based on the existence of the United Nations. Caution had to be exercised, but it must not be allowed to disguise any lack of inclination to make the principle viable and effective.

34. Before embarking on detailed discussions of the specific proposals, the Committee had to be clear as to what it really meant by the use of force. At that stage he was not proposing any full-scale exercise to define the use of force, but it was important that the Committee should not be talking at cross purposes. In his view the use of force went beyond aggression. It could take many forms, direct or indirect, overt or covert, military, political or economic, and all those elements had to be borne in mind if the Committee was to make further progress in its work.

35. He had no difficulty in agreeing that the peaceful settlement of disputes was relevant to the Committee's work; respect for the injunction of the Charter to all States to settle their disputes peacefully would certainly bring wider acceptance of the non-use of force in international relations. But the settlement of disputes could be peaceful only if it was based on justice and respect for international law. He therefore could not go so far as to accept the view that peaceful settlement of disputes was the only corollary to the non-use of force. He was indeed astonished that collective security, as the direct corollary of the principle of the non-use of force, had not been dealt with in more detail. It was difficult to see how success could be achieved in enhancing the effectiveness of the principle of the non-use of force if the most effective measure to ensure its respect was constantly brushed aside as if it did not exist. He realized that Chapter VII of the Charter was a last resort, but to continue to ignore its existence or shy away from invoking it was an open invitation to aggressors to persist in the use of force and was certainly no encouragement to attempts to settle disputes peacefully.

36. Mr. ROS (Argentina) said that, although the authors of the Covenant of the League of Nations and of the Charter of the United Nations had included in those instruments the obligation to refrain from the use of force, it must be emphasized that no prohibition could take effect if it was not backed up by the will of the States to which it was addressed. The history of the past 33 years, characterized as it was by repeated illegal use of force as an instrument to impose policies on States against their will, had confirmed that beyond a shadow of doubt; hence the need to keep international attention focused on the fundamental principles of the Charter to make sure that they were not forgotten. That the General Assembly had done by adopting various resolutions, such as resolution 290 (IV) on the Essentials of peace, the objectives of which were still fully pertinent.

37. The opinions submitted by States to the Special Committee merited careful study and constructive appraisal not only because of the sensitive nature of the issue, but also because of its close relationship with other United Nations activities aimed at the establishment of a new international economic order. In that context, the recent declaration approved by the non-aligned countries, meeting in Belgrade, with its reiteration of the need to eliminate the threat or use of force and pressure in international relations as one of the fundamental objectives

of the policy of non-alignment, should be noted. His country fully supported the ideas set forth in that declaration, which clearly summarized the dangers faced by the international community when the powerful States tried to establish a system of relations between nations based on the use and abuse of force and resources.

38. It was not always necessary to resort to arms in order to achieve aims which were contradictory to the spirit of the Charter. The declaration also condemned pressures such as outside support to terrorism, covert attempts to destabilize Governments, defamatory press campaigns, the use of financial bodies to try to control international credit, methods which came close to constituting interference in the internal affairs of States and violation of the principle of non-intervention.

39. Behind such conduct there was invariably a paternalistic attitude, the irresponsible arrogance of those who believed they possessed the truth, or the selfish manipulation of partisan interests. Invariably it was backed by economic and military power which made it possible to achieve the end in view without any immediate need to resort to violence. Those were matters which he believed should be considered by the Committee because their consequences were often more long-term than those of direct acts of aggression and had an equally adverse effect on the international community.

40. His delegation was ready to consider all the various opinions in a broad context with a view to the building of an effective system of collective security, the final goal of which should be the universal implementation of the purposes and principles that gave meaning to the existence of the United Nations. It was his country's profound conviction that every State should solemnly undertake the obligation to solve its international problems and disputes through peaceful means and by negotiations. A flexible dialogue was vital for the maintenance of peace and the most useful purpose served by the United Nations was that it provided a centre for a constant exchange of opinions in the search for a more just international economic order. The importance of the Committee in offering an opportunity to analyse aspects of the Charter which had not been fully implemented in international relations was undeniable. The Soviet delegation deserved to be commended for its initiative and his delegation felt that the idea set forth in the draft (A/AC.193/L.3) should be extensively analysed from all points of view. It was more than willing to co-operate in the search for means to improve current international relations.

41. Mr. KOLESNIK (Union of Soviet Socialist Republics), commenting on the various statements made in the general debate, noted that the overwhelming majority of members of the Committee had reacted positively to his delegation's draft world treaty on the non-use of force in international relations. As expected, many delegations had advocated the use of that document as the basis for the Committee's future work.

42. The discussions on that question at the thirty-first and thirty-second sessions of the General Assembly and the written comments submitted by Governments testified to the importance and timeliness of the Soviet initiative and to the need to take practical steps towards the preparation of such a treaty. However, a small number of delegations had raised all kinds of doubts concerning the conclusion of such an

(Mr. Kolesnik, USSR)

instrument. In essence they had repeated assertions the lack of justification for which had already been pointed out by many delegations in the General Assembly. Perhaps the most far-reaching of those objections was the argument that the principle of the non-use of force in international relations, as an active rule of international law, could not be strengthened by a treaty because the reason for the non-observance of that rule lay in the absence of political will. Indeed, one delegation had affirmed that the conclusion of the proposed treaty could undermine the Charter and could even provide a pretext for failing to observe the principle of the non-use of force enunciated in Article 2, paragraph 4.

43. Such affirmations were entirely divorced from reality. It was true that the strict observance by States of their obligation to refrain from the use of force could not be automatically assumed merely as a result of the conclusion of a treaty, since the will of States, manifested in concrete acts of foreign policy, was predetermined by social and political factors not governed by international law. However, the will of States could not be weighed against the obligation not to use force. The reasoning according to which the will of States was of paramount importance for the fulfilment of an international obligation could only reflect the nihilistic approach of the States concerned towards international law and their belief in the freedom to act as circumstances dictated. In reality the safeguarding of law and of the international legal order required that the will of States should be manifested in their voluntary assumption of obligations.

44. A world treaty would undoubtedly be an important political factor influencing the will of States to observe the obligation to refrain from the use of force. It was precisely because certain States continued unilaterally to violate the principle of the non-use of force that there was an urgent need for measures to ensure scrupulous observance of that principle. As had been observed by many speakers, drawing attention to the obligation to refrain from the use of force by concluding a treaty would be conducive to the fulfilment of that obligation by each State.

45. As to the assertion concerning the possible negative influence of the treaty on the legal force of the Charter, a distinction must be drawn between the legal force of a principle and its effectiveness. The non-use of force was, thanks mainly to the Charter, an active principle of law which possessed legal force independently of the proposed treaty. The treaty would simply confirm the legal force of the obligation assumed under the Charter but would in no way lead to the assumption of any future obligation. The purpose of the treaty was to enhance the effectiveness of the existing obligation. Thus, theoretically speaking, the argument that the conclusion of a treaty could lead to a weakening of the legal force of the Charter was unfounded, for it ascribed to such a treaty the purposes already fulfilled by the Charter and ignored the purpose of enhancing the effectiveness of the obligation to refrain from the use of force.

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46. In the legal sense, the proposal to conclude a treaty was based on the existence of the customary rules of international law developed in Article 2, paragraph 4, of the Charter and flowing from the acceptance as mandatory by the international community of various provisions reflected in General Assembly resolutions and international treaties adopted by way of interpreting the principle of the non-use of force. Such an approach was rightly considered to be traditional in the practice of the codification and progressive development of international law with a view to enhancing its effectiveness.

47. Another approach, aimed at impeding the elaboration of the proposed treaty, was the assertion that improving the procedures for the peaceful settlement of disputes would be more effective than a treaty in ensuring fulfilment of the obligation not to use force. One representative had, whether consciously or otherwise, actually spoken against the strengthening of the very principle of the non-use of force: judging from his words, the use of force or the threat of force would be inevitable until more effective machinery for the peaceful settlement of disputes was devised. The conclusion of the treaty, being one means - and from his delegation's standpoint the most important means - of enhancing the effectiveness of the obligation not to use force not only would not exclude but would actually presuppose an improvement in the machinery of the various elements involved in the fulfilment of that obligation. That was why the draft treaty linked the question of the non-use of force with the problem of the peaceful settlement of disputes, in article II, and with measures for lessening military confrontation and for disarmament, in article IV. The undertaking not to use force, however, unquestionably had priority over those elements.

48. Article II of the draft treaty linked the problem of the non-use of force with the principle of the peaceful settlement of disputes in formulations corresponding to Article 2, paragraph 3, and Article 33 of the Charter and, in its paragraph 3, developed those formulations. The draft treaty reaffirmed the principles embodied in Article 33 of the Charter of the freedom to choose peaceful means and at the same time referred to settlement procedures adopted by States either in respect of a specific dispute or under individual agreements.

49. The question of the non-use of force and the problem of the peaceful settlement of disputes constituted two sides of the same coin, and must not be set off one against the other: if international law prohibited the use of force, there remained only one course to take, that of the peaceful settlement of disputes; and, conversely, the existence of an international undertaking concerning the peaceful settlement of disputes automatically signified the illegality of the use of force for settling disputes. Thus, the problem of the peaceful settlement of disputes should be settled in the context of a treaty on the non-use of force, as was proposed in the Soviet draft treaty. However, it would be an unforgivable error to substitute for a treaty on the non-use of force some other legal instrument on the procedure for the peaceful settlement of disputes.

50. In addition, there were other conclusions and considerations which must of necessity be taken into account by the Committee and which precluded replacing the

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drafting of a treaty by some other procedure. Attempts were being made to blur the Committee's mandate. In paragraph 2 of General Assembly resolution 32/150 the Committee was instructed "to consider proposals and suggestions submitted by any State ... with the goal of drafting a world treaty on the non-use of force in international relations", while the question of the peaceful settlement of disputes was placed on the level of "other recommendations as the Committee deemed appropriate".

51. Paragraph 2 of that resolution unquestionably referred to the drafting of a world treaty as the Committee's primary task. That interpretation of the Committee's mandate - the only true interpretation - was strengthened by the reference in that same paragraph 2 to the views expressed during the debates on the item at the thirty-first and thirty-second sessions of the General Assembly, at which the overwhelming majority of States had unequivocally expressed their support for just such a treaty. That interpretation of the Committee's mandate was borne out by the preamble of the resolution, which also referred to the principle of the non-use of force and to the draft world treaty on the non-use of force submitted by the Soviet Union in document A/31/243. An identical interpretation of the Committee's task flowed from General Assembly resolution 31/9. Thus, there was no contradiction between the Committee's mandate and the title of General Assembly resolution 32/150, which read "Conclusion of a world treaty on the non-use of force in international relations". It was significant that the United Kingdom representative in the Sixth Committee had indicated that that was his understanding of the resolution.

52. One or two delegations had attempted in their statements to represent the proposed treaty merely as a "repetition" of the relevant provisions of the Charter. That assertion, the weak and tendentious nature of which was obvious to all, was used for the purpose of criticizing the very elaboration and conclusion of such a treaty. They used a circular argument to the effect that to repeat in a treaty the language of the Charter would be bad, while to use other language would be even worse. In their view, the most that could be done would be to draw up a declaration or other document of a recommendatory nature concerning the principle of the non-use of force. Where was the logic of such an argument? In view of the repeated violations of peace, there was obviously an urgent need to ensure the strict observance of the principle of the non-use of force, and that could be achieved only through the incorporation of that principle in a legally binding instrument. In any case, the United Nations had already adopted declarations and resolutions on the question of the non-use of force.

53. With reference to the proposals and comments of delegations in support of the Soviet draft treaty, he noted that in the view of some delegations the term "force" should include not only armed force but also other kinds of force, notably economic and political pressure. The USSR firmly opposed all forms of force in international relations, as could be seen from its support of the new international economic order. At the same time, recognition of the fact that all forms of force in international relations were illegal and contradictory to the Charter did not signify that the broad conception of the term "force" must necessarily be embodied in a treaty on the non-use of force. The draft world treaty was designed above all

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to prohibit the most dangerous form of the illegal use of force, namely, the use of armed forces involving any types of weapons. While it by no means underestimated the importance of prohibiting economic and political pressure, the Soviet delegation considered that it was essential above all to focus attention on the formulation of political and legal guarantees ensuring that in their international relations States would not use armed force and that all disputes between them would be settled not by force of arms but by peaceful means. That was the main purpose of the draft treaty. Moreover, the draft emphasized that aspect of the use of force in close relationship with the problem of prohibiting use of the most destructive weapons - nuclear and other types of weapons of mass destruction. That approach enjoyed the broad support of the overwhelming majority of Member States. The need to solve the problem of the non-use of force as an organic whole including the problem of prohibiting the use of nuclear weapons, in the context of the prohibition of the use of armed forces in general involving any types of weapons, was determined by the actual world situation. The power of nuclear weapons, which from the beginning had been recognized as the most terrible weapons of mass destruction, had since increased a thousandfold and would continue to increase unless timely action was taken to stop their development. It was true that they had not been used since the end of the Second World War, but the power of conventional weapons had also vastly increased and their continuing use had inflicted indescribable suffering on human beings and caused incalculable destruction in terms of material and cultural values. It was not hard to realize that unless the use of force in international relations was brought to an end future conflicts involving the use of non-nuclear weapons would be bloodier and more destructive than ever. There was accordingly a need to formulate clear international rules prohibiting the use of all possible types of weapons, leaving no loop-holes.

54. The wish had been expressed in the general debate that the draft treaty should clearly reflect the right of States to resort to individual or collective self-defence, and apprehensions had been voiced to the effect that article I, paragraph 3, of the draft treaty restricted that right. First of all, he wished to emphasize that the treaty had been drafted in strict conformity with the Charter and in no way affected the inalienable right of States to resort to individual or collective self-defence, as set forth in Article 51 of the Charter. Although article III of the draft treaty made no direct reference to the right of self-defence, it did in effect unequivocally reaffirm the possibility of legal resort to force in all cases provided for in the Charter. Furthermore, the reference in article III to treaties and agreements concluded earlier by States strengthened the right to self-defence set forth in Article 51 of the Charter, which could be realized in practice through the conclusion of bilateral and regional agreements for mutual assistance.

55. Article I, paragraph 3, of the draft treaty retained for States parties the right to use force in cases not prohibited by the Charter. At the same time, in

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response to the wishes of many developing countries and in view of the special importance of self-defence for the security of each State, his delegation was ready to consider a more specific reflection in the text of the draft treaty of the principle of self-defence in strict accordance with the Charter. Such a formulation should exclude the possibility of referring to self-defence to justify preventive armed actions and should confine self-defence activities to a response to armed attack, the scope of which was set forth in the Definition of Aggression. His delegation firmly opposed any theories of "preventive self-defence" and "pre-emptive strikes". At the same time, the draft treaty in no way affected the right of peoples and States to wage a struggle to eliminate the consequences of aggression and to seek the return of territory seized by the aggressor. There was a difference of principle between armed actions for the purposes of aggression and the exercise of the legal right to repulse aggression or to eliminate its consequences.

56. With regard to the question of the right of colonial peoples to wage a struggle for their freedom and independence, he emphasized that the draft treaty would in no way restrict that right, which was based on the Charter and on the Declaration on the Granting of Independence to Colonial Countries and Peoples. In addition, the preamble of the draft treaty referred to a number of United Nations documents which upheld the legality of the struggle of the colonial peoples for their freedom and independence. That important aspect of the draft treaty had been underscored by L. I. Brezhnev, General Secretary of the Central Committee of the Communist Party of the Soviet Union and Chairman of the Presidium of the Supreme Soviet.

57. It was hardly surprising that delegations which had expressed reservations concerning the very idea of concluding a treaty had voiced dissatisfaction that the draft treaty permitted what they termed "exceptions" to the principle of the non-use of force. One delegation had even asserted that if the draft treaty was not going to apply to the struggle of colonial peoples for their freedom and for elimination of the consequences of aggression, it would be entirely pointless. Such statements could only be regarded as an attempt to deny the sacred right of colonial peoples to struggle for their freedom. The draft treaty would be expected to incorporate and strengthen all new, progressive elements that had been worked out by concerted efforts and reaffirmed in many United Nations decisions.

58. In that connexion his delegation was ready to consider in a constructive light the proposals and comments put forward by a number of delegations in which they had directly upheld the legality of the struggle of peoples under the colonial and racist yoke for their freedom and independence.

59. With regard to the important question of the machinery for implementing the draft treaty, parties to the treaty would be concerned to ensure that their undertaking became an immutable rule of international life. His delegation noted with satisfaction that the overwhelming majority of delegations - and he particularly commended in that connexion the statement by the representative of

(Mr. Kolesnik, USSR)

Cyprus - had proceeded from the premise that the means of ensuring fulfilment of the undertaking not to use force consisted above all, as reflected in the draft treaty, of the machinery for enforcement measures provided for in Chapter VII of the Charter. However, the draft treaty went a step further by incorporating in article IV the undertaking of States parties to make all possible efforts to implement effective measures for lessening military confrontation and for disarmament, and by incorporating in article II their undertaking to settle disputes by peaceful means. Article V, too, made an important contribution to ensuring the non-use of force in inter-State relations; under it, States could incorporate in their Constitutions special sections in which they would proclaim their adherence to the principle of the non-use of force in international relations, reflect their intention to seek general and complete disarmament and avert aggressive wars, and to reaffirm the principle of the peaceful coexistence of States with different social systems. Such measures would undoubtedly give additional weight to efforts at the international level for the further strengthening of détente.

60. Thus the draft treaty provided for a sound system of measures and guarantees based on the Charter for ensuring fulfilment of the key undertaking of States to refrain from the use or threat of force in international relations. However, the draft treaty must not and could not replace the machinery provided for in the Charter for strengthening international peace and averting armed conflicts.

61. It clearly emerged from the general debate that the Committee must proceed without delay to the actual drafting of the treaty, in pursuance of the Committee's mandate. The Committee thus far had only one document before it, namely, document A/AC.193/L.3. Consequently, it would be logical to use that document as the basis for the Committee's work. His delegation hoped that all members of the Committee would make constructive and practical proposals aimed at the speedy elaboration of that important international instrument.

62. His delegation supported the Bureau's suggestion to establish an open-ended working group. As and when progress was made by the group in formulating individual articles of the treaty, the plenary Committee could meet in order to monitor that work. Lastly, his delegation proposed that the Committee should adopt a resolution recommending that the General Assembly extend the Committee's mandate to enable it to carry out the tasks assigned to it.

63. Mr. THEODORACOPOULOS (Greece) recalled that his country's views on the need to strengthen international procedures for the peaceful settlement of disputes had been made clear by the Prime Minister in his address to the tenth special session of the General Assembly. His delegation had voted in favour of the Soviet proposal in the First Committee because it supported any initiative designed to obtain full implementation of the Charter. Despite the existence of numerous instruments embodying the principles of the non-use of force and the peaceful settlement of disputes, there had been many local wars and international armed conflicts, and resolutions adopted by various United Nations organs, particularly the Security Council, had been totally disregarded. Examples of the illegal occupation of the territories of other States and the forcible removal of

(Mr. Theodoracopoulos, Greece)

peoples from their ancestral homes were still to be found in Africa, the eastern Mediterranean and elsewhere. New methods therefore had to be found to make sure that the principle of the non-use of force was implemented. The Soviet draft contained in document A/AC.193/L.3 presented the Committee with a unique opportunity to consider that matter in a more constructive manner.

64. By and large, his delegation accepted the draft but believed that it should reaffirm some of the basic principles set forth in the Charter and remind States of their duty to carry them out. In addition, it should not be weaker than existing instruments, particularly the Final Act of the Conference on Security and Co-operation in Europe. Reference should be included to paragraph 5 of Article II of the Charter and a series of sanctions should be provided against aggressors and would-be aggressors. In other words, that meant implementation of Chapter VII of the Charter, which had so far remained a dead letter. In addition, there should be specific mention of the provisions of Article 51 of the Charter on individual or collective self-defence. Furthermore, his delegation would like to see the inclusion of a formulation closer to the one contained in section II - Refraining from the threat or use of force - of the Final Act of the Conference on Security and Co-operation in Europe, to the effect that "no consideration may be invoked to serve to warrant resort to the threat or use of force in contravention of this principle".

65. With regard to the peaceful settlement of disputes, his country had expressed its views on various occasions and had recently submitted a working paper to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization suggesting that an international treaty should be concluded containing provisions to ensure implementation of Chapter VI of the Charter and enforcement of the Security Council decisions under Article 37.

66. Mr. ROSENSTOCK (United States of America) said it was important to avoid misquoting or partially quoting from the Committee's mandate out of context and also giving predominance to any one of the particular principles listed in Article 2 of the Charter over the others. Although the Committee had originated under an item entitled "Conclusion of a world treaty on the non-use of force in international relations", its mandate, as contained in General Assembly resolution 32/150, referred to enhancing the effectiveness of the principle of non-use of force in international relations. Operative paragraph 2 of that resolution instructed the Special Committee to consider proposals and suggestions submitted by States with the goal of drafting a world treaty, but it also gave it the option of considering any other recommendations it deemed appropriate. In other words, it might decide to proceed with other recommendations rather than drafting a world treaty. Therefore, its mandate was not to work on or accept a particular text merely because that text had been in circulation since the item had first been placed on the agenda of the General Assembly.

67. With regard to the Soviet delegation's suggestion that the Committee should meet as an open-ended working group, his delegation supported that idea provided it meant that the whole Committee would work informally without records in order to explore, in greater detail, some of the matters that had been raised.

(Mr. Rosenstock, United States)

68. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to convene as a working group, with the participation of all delegations, on the following Monday.

69. It was so decided.

The meeting rose at 12.55 p.m.

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SPECIAL COMMITTEE ON ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF NON-USE OF FORCE IN INTERNATIONAL RELATIONS

SUMMARY RECORD OF THE 14th MEETING

Held at Headquarters, New York,
on Friday, 15 September 1978, at 10.30 a.m.

Chairman: Mr. CUEVAS CANCINO (Mexico)

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Adoption of the report

This record is subject to correction.

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Any corrections to the record of this meeting and of other meetings will be issued in a corrigendum.

The meeting was called to order at 11.05 a.m.

ADOPTION OF THE REPORT (A/AC.193/L.4 and Add.1, A/AC.193/L.5)

1. The CHAIRMAN suggested that delegations should be given more time for informal consultations.

2. It was so decided.

3. The meeting was suspended at 11.10 a.m. and resumed at 12.40 p.m.

Part I (A/AC.193/L.4)

4. The CHAIRMAN said that in the course of consultations an additional paragraph had been agreed upon for insertion as paragraph 11 of part I.

5. Mr. ROMANOV (Secretary of the Committee) said that the new paragraph would read:

> "Since the Committee had not completed its work, it recognized the desirability of further consideration of the questions before it. Many delegations supported the continuation of the Committee's work and stressed the importance of the issues. On the other side, there were many delegations which took the position that renewal of the mandate was a matter falling within the competence of the General Assembly."

6. Mr. KOSTOV (Bulgaria) said that, since a compromise solution had been found, he would not press for a vote on draft resolution A/AC.193/L.5.

7. Mr. ROSENSTOCK (United States of America) said, with reference to paragraph 8 of document A/AC.193/L.4, that the annexation of the Soviet Union's "Draft World Treaty on the Non-Use of Force in International Relations" (A/AC.193/L.3) to the Committee's report was contrary to General Assembly resolution 2836 (XXVI) on publications and documentation, especially since the text in question had also been issued under the symbol A/31/243. He suggested that the Committee should abide by the resolutions of the General Assembly.

8. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that, since document A/AC.193/L.3 was the only draft agreement submitted to the Special Committee so far, his delegation insisted that it should appear as part of the Committee's report, following the precedent set by the practice of other special committees in reports prepared after the adoption of the General Assembly resolution referred to by the United States representative. The Sixth Committee must be given a clear picture of the Special Committee's work and of the material which the Special Committee had had before it.

9. Mr. ROSENSTOCK (United States of America) said that he would not press for a vote on the matter. However, his Government believed in the sovereign equality of

(Mr. Rosenstock, United States)

all States. In 1977 the question had arisen of annexing document A/AC.182/L.12/Rev.1 to the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. Citing General Assembly resolution 2836 (XXVI), the Soviet Union had protested against the annexation of that document to the report, since that would be a violation of a legally binding General Assembly resolution. The Soviet Union had pushed the matter to a vote, and his own delegation had voted in favour of not annexing the document to the report. All documents should receive equal treatment. He hoped that the inconsistency shown by the Soviet delegation merely reflected passing opportunism and not a disbelief in the sovereign equality of all States.

10. Mrs. D'HAUSSY (France) said that the French text of paragraph 10 did not coincide exactly with the English text. It was a question of translation: she trusted that the French text would be brought into line with the English text.

11. Part I (A/AC.193/L.4), as amended, was adopted.

Part II (A/AC.193/L.4/Add.1)

Paragraphs 1 to 7

12. Paragraphs 1 to 7 were adopted.

Paragraphs 8 to 28

13. Mrs. D'HAUSSY (France) said that paragraphs 15 to 18 did not adequately reflect the views expressed by her delegation. Two essential points in particular had been omitted. Firstly, formulations such as those in the Charter were always preferable to texts drafted on the basis of the concerns of the moment, and, secondly, her delegation was not convinced that drafting a new treaty was the best approach, because it would be a useless exercise if it merely reiterated the provisions of the Charter and if, on the other hand, it introduced new elements that were not in the existing provisions, that would be tantamount to revision of the Charter.

14. Mr. HOUNGAVOU (Benin) proposed that, in order to reflect adequately statements by his own delegation and others, the words "the use of mercenaries," should be inserted in the second sentence of paragraph 21, after the words "covert attempts to destabilize Governments,".

15. It was so decided.

16. Paragraphs 8 to 28, as amended, were adopted.

Paragraphs 29 to 69

17. Paragraphs 29 to 69 were adopted.

18. Part II (A/AC.193/L.4/Add.1), as amended, was adopted.

19. The report (A/AC.193/L.4 and Add.1) as a whole, as amended, was adopted.

20. Mr. FIFOOT (United Kingdom) said his delegation doubted whether the Special Committee was the appropriate forum for the discussion of a number of very serious issues which had been touched on in the debate. His delegation would revert to that question during the discussion in the Sixth Committee of the General Assembly. As had been pointed out in the report of the Secretary-General (A/33/1), the procedures of the United Nations might have the effect of overloading the absorptive capacity of Governments, numbing public interest in vital subjects and substituting formal and, sometimes, rhetorical exchanges for action.

21. Mrs. D'HAUSSY (France) said her delegation shared the view of those who felt that it was for the General Assembly to evaluate the results of the Special Committee's work and decide whether or not to renew its mandate.

22. After an exchange of courtesies, the CHAIRMAN declared the session closed.

The meeting rose at 1.30 p.m.